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provided all knowledge of its authorized acts be kept from the party to be injured until the injustice should be complete. We hold, that a corporation has no power to do what it is inhibited by its charter from doing; and if, in violation of it, injury should be done to the property of a third party, it is liable. There can be no hardship in such a rule; all that is necessary for it to do to avoid liability is to confine itself within the limits prescribed by law, which gives it existence and defines and regulates the extent and exercise of its delegated powers. We concur with the Chancellor in opinion in so far as his decree has reference to the City of Baltimore, but dissent from that portion of it which exempts the Savings Bank from liability to complainants for the amount of the stock sold. We will sign a decree in conformity with these views.

Bill dismissed as to the City of Baltimore, and decree reversed so far as the Savings Bank is concerned.

Louisville Chancery Court, Kentucky, January, 1853.

SECOMB, VOORHIES & CO. VS. JONES WADE.

1. Where J. W. purchased certain merchandise at Wilmington, N. C., and shipped it on board a vessel bound to New Orleans, consigned to M. & R., to be forwarded to J. W. at Cincinnati, with instructions to M. & R. to sell it at a certain price: and thereupon a portion is sold and a portion remains unsold and continues its transit, the latter is still subject to the vendor's right of stoppage *in transitu*, the middle man having no such possession as to end the transit.
2. An effort to sell or a sale of part of goods consigned to a forwarding merchant, in obedience to instructions, is not such a change of the destination or possession of the whole as to destroy the vendor's right *in transitu*.
3. Goods in transit stopped by a general creditor are still subjected to the vendor's claim for the purchase money.

This was an attachment sued out by the complainants, creditors of Wade, against a large amount of property passing by the City of Louisville from New Orleans to the defendant at Cincinnati.

In February, 1852, Wade bought of Henry Nutt, on credit, at Wilmington, North Carolina, a large quantity of spirits of turpen-

tine, rice, tar, rosin and pitch, which was shipped by his order, "on board the Brig Frontier, bound to New Orleans, and consigned to Messrs. Marsh & Ranlett, to be forwarded to Mr. S. Jones Wade of Cincinnati." Wade advised the house of Marsh & Ranlett of the shipment, and instructed them, if they could sell at a certain price to do so; and they did accordingly sell one hundred barrels of the spirits of turpentine. The residue, still a large amount, they forwarded in different boats destined to Cincinnati. Several thousand dollars worth of the property was seized by the attachment.

Henry Nutt, by his petition, asked to be made a party to this suit, which was ordered; and he claims the right of the vendor as if he had stopped the goods *in transitu*, Wade having become insolvent.

The destination of the property was fixed by the bill of lading, to Cincinnati.

The opinion of the Court was delivered by

PIRTLE, CH.—The doctrine of stoppage *in transitu*, was, perhaps, unknown to the old common law. It was introduced by the Court of Chancery, first, as far as we know, in the time of Will. 3d, and afterwards the Courts of law took it up, and between the Courts of law and equity the rule, as we have it now, was ultimately established, but not without considerable difference of opinion.

By the Civil Law, the right of the vendor to pursue the property sold where the purchase money was not paid, and subject it to payment of his debt in preference to other creditors, on insolvency, extended to cases where the possession had actually been had by the vendee. The French law was about the same. With these codes before the Courts of law and equity in England, claiming the attention of jurists in all lands, the rule was established which has come to us. The regard to a more extended commerce did not allow these Courts to afford the right of *lien* as given substantially in the Civil Law and the French law; because the rights of creditors and purchasers from the vendee, who saw the property in his possession, were not deemed sufficiently guarded by this rule. But the right to stop the goods sold *in transitu* was fixed in these Courts; and no doubt the design was to allow the right of the vendor as far as would be

consistent with a due regard for the exigences of commerce, and the free disposition of property. Such would seem to be the true and just rule. The remedy is restricted enough; I would rather advance it than take one step backwards. It seems to every one, at first thought, that the vendor has, while the goods bought have not come to the general stock of the vendee, a better right than any other to be satisfied out of the property sold on credit. But the Courts have not extended the right of the vendor further than to *stop* the goods before they have come to the actual or *constructive* possession of the vendee; that is to say, while they are really and in commercial view, *in transitu.* It seems to me that the effect given to a constructive possession is often unnecessarily injurious to the vendor.

Lord Hardwicke's rule was to allow the vendor's right where there was no appearance of credit on the goods or money paid on them. *D'Aquila* vs. *Lambert*, Ambler Rep. 400. However, where the *transitus* ends, is the question.

The designation of a carrier, or forwarding merchant, by the vendee, or, generally, any order he may give as to the hands through which they shall pass, has not been held to affect the right of the vendor. Should he have them ordered to a merchant, to be sent by him to other markets, as the vendee might thereafter order, or to be sent by this merchant as in his discretion, as agent of the vendee, he might deem best, the transit would be determined. *Dixon* vs. *Baldwin*, 5 East. 175. This is the end of the destination fixed at the time of the purchase.

But where the passage of the goods does actually go on, according to the bill of lading, although other things with regard to them may be provisionally ordered by the vendee, this shall not affect the vendor's right. Why should such an order affect him? The property is in the vendee when it is delivered to the ship; but this does not affect the vendor's right to save his purchase-money. Why should an order to sell do so, where it is conditional, as in this case, and the goods are to pass on, if the price fixed cannot be obtained? This is no more than if the vendee had ordered the forwarding merchant to hold the goods until there should come a good stage of

water in the great rivers, or until a boat belonging to the port of Cincinnati should be found to carry them. This might be for months, but still, all merchants would deem them to be on transit according to the original bill of lading. The middleman has no possession to end the transit any more than the carrier, although the goods may abide with him long. If the carrier were instructed to sell, if he could get a certain price, if not, to carry on the goods, he would still be a carrier only, unless he sold them; and the goods would still be *in passing* in every practical sense.

That Marsh and Ranlett sold some of the property can make no difference. They passed on what they did not sell pursuant to the bill of lading, signed at Wilmington.

I do not find any adjudged case precisely like this, where an order had been made by the vendee to sell a part, or the whole,—and this order might well have extended to the whole, according to the proof; but I do not think public policy should make such an order change the rule, and plain justice to the vendor forbids the change.

Indeed, there is much more danger in restraining the right of the vendor, than in enlarging it. The goods are generally, indeed universally, marked in the usual mercantile way, showing the destination of the shipment; and the exceptions to this open destination, which is also further shown by the original bill of lading, should be distinct and clear. This, it seems to me, would be the better rule in our American commerce. Surely there are reasons why our trade, passing from State to State, should be more liberal than it is in Europe, where there is not one language, and one habit of business.

In *Jones* vs. *Jones*, 8 Mees. & Wels. 441, the counsel argued thus: "With respect to the taking of samples, no doubt if it had been done with the intention to take possession of the whole cargo, the *transitus* would have been determined thereby: but here it was done solely with a view to a sale of so much as the plaintiff might be able to dispose of at Barmouth, leaving the remainder to proceed to the end of the voyage." The court, in responding to the argument, said: "The taking of samples is an equivocal act; it might

be that he took them in order to ascertain whether he could dispose of any part of the goods there, without intending thereby to take actual possession," before the original *transitus* was ended.

Now, in this case, will the effort to sell by the forwarding merchants, or the sale of part, change the destination of all from Wade at Cincinnati to the house of Marsh & Ranlett at New Orleans?

In the case of *Whitehead* vs. *Anderson*, 9 Mees. & Wels. 534, the court said, "A case of constructive possession is where the carrier enters expressly, or by implication, into a new agreement, *distinct* from the original contract for carrying, to hold the goods for the consignee as his agent, not for the purpose of expediting them to the place of original destination, pursuant to the contract, but in a new character, for the purpose of custody on his account, and subject to some new or further order to be given him."

It is plain to me, that the merchants at New Orleans did hold the goods only for the purpose of expediting them on their voyage from Wilmington to Cincinnati, as they did not sell them for the price fixed.

As to the effect of the attachment on the right of Henry Nutt, it is a matter ruled without any contradiction. If the goods in transit are stopped by legal process of a general creditor, the vendor may assert his right to subject them to his debt for the purchase money; and this is equivalent to the stoppage *in transitu* by himself; and he will have the preference over the legal process, although but for the suit that stopped them, they would have fallen into the hands of the vendee. *Buckley* vs. *Furniss*, 15 Wend Rep. 137; *Naylor* vs. *Dennie*, 8 Pick. Rep. 198; *Sawyer* vs. *Joslin*, 20 Vermont Rep. 172; *Covell* vs. *Hitchcock*, 23 Wend. Rep. 611; *Hause & Son* vs. *Judson*, 4 Dana, 11.

Henry Nutt must be paid first, out of the money in court, except that the costs of the complainants must be taken out of his share.

Judgment accordingly.

NOTE.—The delivery of part of the goods sold, under one entire contract, to the purchaser, without any intention on the part of the seller to retain the rest, is deemed a delivery of the whole; but this rule is confined to cases, where the delivery

of part is intended to be a delivery of the whole; but this may be rebutted, and, if so, the right of stoppage may continue as to the residue undelivered; Abb. on Shipp. 325, 7th ed. See also Chitty on Contr. 433, text and Perkins's Notes, 5th ed; Miles *v.* Gorton, 2 Cromp. & Mees. 508, and Am. Ed.'s Note; Burney *v.* Poyntz, 4 B. & Ad. 568; Betts *v.* Gibbins, 4 N. & Man. 64 S. C., 2 Ad. & Ellis, 57. Story's Contr. § 823, 2d ed.; Tanner *v.* Scovill, 14 Mees. & Wels. 28, Smith on Contr. 451. Rawle's ed. 1853, 2 Kent Comm. 545, Notes, 7th ed; Valpy *v.* Gibson, 4 Mann. Gr. & Sc. 837.

Court of Appeals of Kentucky, January, 1853.

FERRY *vs.* STREET.

1. A slave carried into Pennsylvania, with her owner's consent, and residing in that State for a period of more than six months, with a full knowledge on the part of the owner, of the Pennsylvania Act of 1780, is entitled to her freedom.
2. Such law operates permanently upon the rights of strangers, where they are informed of its provisions, and may, if they choose, avoid its consequences.

The facts fully appear in the opinion of the Court, which was delivered by CRENSHAW, J.

In the spring of the year 1838, Clarissa, a woman of color, the property of Mrs. Trigg, at the instance of her mistress, accompanied Mrs. Alexander to the city of Philadelphia. The object of Mrs. Alexander in visiting this city, was to consult physicians there upon the subject of her eyes, which were much diseased, and, if necessary and advisable, to place herself under their treatment. Mrs. Alexander, being a near relative of Mrs. Trigg, being in a very helpless condition in consequence of defective sight, and Clarissa being a very faithful and trustworthy servant, Mrs. Trigg determined to send Clarissa with Mrs. Alexander to Philadelphia, to take care of and wait upon her. But, before they departed on their journey, Mrs. Trigg sent for Jeptha Dudley to consult him in regard to the laws of Pennsylvania, and what effect they might have upon slaves sent by their owners into that State. Dudley visited Mrs. Trigg according to her request, and informed her that he was no lawyer, but his impression was, that if Clarissa should remain in Pennsylvania as long as six months she would be entitled to her freedom.